IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

MISC.CIVIL APPLICATION No 218 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SADHANABEN NANJIBHAI MULIA

Versus

RAJESHKUMAR CHUNILAL BHOKIA

Appearance:

1. Misc.Civil Application No. 218 of 2001

MR NS SHETH for Petitioner No. 1

MR BC DAVE for Respondent No. 1

MR RAVINDRA SHAH for Respondent No. 1

MRS KANAN R SHAH for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 16/09/2003

ORAL JUDGEMENT

This is an application filed by wife living

separately from her husband-present opponent to transfer Hindu Matrimonial Petition No. 1498/2000 pending before the Family Court, Court no. 4, at Ahmedabad to any court of competent jurisdiction of Junagadh, under section 24 of the Code of Civil Procedure.

At the out set, the petitioner wife has stated that the marriage between the parties took place on 4.3.1995 at Junagadh according to Hindu rites. Their matrimonial life faced bad weather and according to petitioner-wife, the opponent drove her out of house sometime in May 1997. According to the applicant, the opponent is proprietor of Yogi Computers Consultancy and earns. The applicant has also filed application under sec. 125 of Code of Criminal Procedure for maintenance. The petitioner preferred one Hindu Marriage Petition No. 30/2000 in the Court of Civil Judge (SD) at Junagadh against the opponent for restitution of conjugal rights. An application being Application No. 53/2000 is also pending before the Civil Judge (SD) Court, Junagadh filed by the petitioner under sec. 18 of the Hindu Maintenance and Adoption Act, wherein alimony was claimed at the rate of Rs. 5000/- per month and the opponent was in arrears to the extent of an amount of Rs. 1,70,000/- up to 28.5.2000. The applicant further stated that it is impossible for her to travel from Junagadh to Ahmedabad to attend the petition for divorce filed by the opponent in the Family Court, Ahmedabad on account of her poor financial condition and the petitioner is also not in a position to employ the service of an advocate. By filing this application, she had to resort to Legal Aid Committee of this High Court. The opponent filed affidavit-in-reply and further affidavit to this application.

Ld. advocate Mr. NS Sheth for the petitioner and ld. advocate Mr. Ravindra Shah for the opponent were heard at length.

Mr. Sheth ld. advocate for the petitioner contended that the transfer application came to be filed on the ground of pendency of other proceedings at Junagadh as well as on the ground of financial position of the petitioner to attend the Family Court, at Ahmedabad. It was urged that the proceedings which came to be filed at Ahmedabad in Family Court for divorce has been filed by the husband and, therefore, the convenience of the wife for attending the court will have to be seen. The reliance is placed by Mr. Sheth on a decision of this court in Civil Misc. Application No. 72 of 2003 decided in July, 2003 in the matter of Riya @ Lata w/o

Mahesh Israni vs. Mahesh s/o Sugnomal Israni, wherein after relying upon the decision of the Apex Court in the matter of Indian Overseas Bank, Madras vs. Chemical Construction Co. and Ors., as reported in AIR 1979 SC 1514 and in the matter of Sumita Singh vs. Kumar Sanjay and anr., as reported in AIR 2002 SC 396 and after relying upon the decision of the Madras High Court in the matter of K.R. Srinathi vs. H. Ramakrishnan, as reported in AIR 1990 Madras p. 330, this Court was pleased to transfer the matrimonial proceedings, at the instance of wife.

While on other hand, ld. advocate Mr. Shah relying on para-7 of the application wherein the ground of transfer is advanced as poor financial condition of the petitioner to meet with the expenses for travelling from Junagadh to Ahmedabad, contended that situation can be met with by compensating and reimbursing the petitioner by expenses which she may incur along with escort and for which as per the affidavit filed by the opponent-husband is prepared to pay. Ld. advocate Mr. Shah urged that only ground for transfer is the expenses of travelling between Junagadh to Ahmedabad and opponent-husband undertakes to pay such expenses at the rate the court may decides. Further it was argued that the opponent-husband has now closed his shop of the computer and is involved in institution of Swaminarayan Temple, Computer Section and it would be inconvenience for him to attend the court at Junagadh. It was argued that when comparative hardship is taken into consideration, the wife is not engaged anywhere, while the husband is occupied with the above said avocation and his absence may affect adversely. Mr. Shah relied upon a decision of this court in the matter of Shilpa Hargovandas Patel vs. Dr. Vishnubhai, as reported in 1999(3) GLR p. 2438, the decision of Apex Court in the matter of Kalpana Deviprakash Thakar (Smt.) vs. Dr. Deviprakash Thakar, as reported in (1996) 11 SCC p. 96, and a decision of the Apex Court in the matter of Shiv Kumari Devendra Ojha vs. Ramajor Shitla Prasad Ojha and ors., as reported in AIR 1997 SC 1036.

Having considered rival contentions and circumstances of the case, the predominating factor which the court exercising the jurisdiction under sec. 24 of the Code of Civil Procedure must bear in mind is that the parties are facing matrimonial disputes. The proceedings pending in the Court at Junagadh as well as Family Court, Ahmedabad, are matrimonial proceedings. There cannot be any straight jacket formula or caste iron principle for transferring a matter from one court to other or to

reject the same. The circumstances of each case will have to be looked into and scanned before coming to the conclusion either way. The facts in this case suggest that the parties being husband and wife living separately since May, 1997. The wife lives on the amount of maintenance or alimony which she might be receiving from the opponent. True, it is that if the question arose is solely of reimbursing the expenses, instead of ordering transfer, the situation can be met with by passing appropriate orders of reimbursement of travelling expenses to her. In this case, the wife lives separately since last five years. The proceedings in the nature of Hindu Marriage Petition for restitution of conjugal rights as well as proceedings under sec. 18 of Hindu Maintenance and Adoption Act have also been filed by the wife at Junagadh. In this fact and in these attending circumstances, the point which has emerged is required to be decided. Even though it might have not been urged by the wife in the petition as a ground but when the matter is put to anvil of comparative hardship, the balance of the case is tilting in favour of wife. It is not only a question of reimbursement of the expenses. The attending circumstances though might not have been advanced as a ground but clearly indicate that the hardship which the wife will suffer, who is living separately from husband in attending the court at Ahmedabad, will in any case be greater on account of position of deserted wife in our social structure, than the hardship which husband will suffer. The close of business on the part of the opponent may not be a ground to reject the request of the petitioner. Likewise, offer to reimburse the wife to come to Ahmedabad to attend matrimonial proceedings would also not solve the situation which has arisen. Above all, the proceedings are filed by the wife at Junagadh out of which, Hindu Matrimonial Petition filed by wife pending before the Junagadh court i.e. Hindu Matrimonial Petition No. 30 of 2000 required to be tried together with divorce petition filed by the opponent in Family Court, Ahmedabad. In any case and in any view of the matter, the request of wife for transfer of Hindu Marriage Petition from Ahmedabad to Junagadh would be justified in the facts and circumstances of this case. The decision relied upon by the ld. advocate for the petitioner are not applicable to the facts of this case. So far as the decision of this court in the matter of Shilpa Hargovandas Patel (supra) is concerned, the court has considered inconvenience and hardship of both the parties to the litigation and this court came to the conclusion that in the facts and circumstances of that case, the husband would not suffer the greater hardship if the matter was transferred at the request of the wife.

Though this decision was pressed into service to convince this Court that there will be no greater hardship to wife in the present case, but as aforesaid, it is always the wife will be put to greater hardship and inconvenience to attend the courts far away to attend the litigation filed by the husband especially since last 5 years the parties live separately and, therefore, this decision would not help the husband-opponent. The other decision of the Apex Court in the matter of Shiv Kumari Devendra Ojha (supra) as relied upon by the ld. advocate for the opponent discloses fact of transfer of Succession Application wherein the Apex Court was pleased to allow expenditure of the travel and stay of the petitioner whenever she attends the court. The matter in hand involves matrimonial disputes and social repercussion and in the best interest of justice, the litigation pending in the court at Ahmedabad is required to be transferred to the court at Junagadh. While in the third decision of the Apex court in the matter of Kalpana Deviprakash Thakar (Smt.) (supra) as relied upon by the ld. advocate for the opponent in para-3, the Apex Court was pleased to record the reasons and grounds in (a) to (f) for rejecting the transfer of divorce proceedings. Going through those reasons, it appears that except reason (d) none of the circumstance is present in this case to refuse the request of the petitioner-wife.

In the above view of the matter and for the reasons recorded as aforesaid, this application is required to be allowed and it is therefore, directed that Hindu Marriage Petition No. 1498/2000 pending before the Family Court, Court No. 4, Ahmedabad is directed to be transferred to the court of competent jurisdiction at Junagadh. It is further directed the Hindu Matrimonial Petition No. 30 of 2000 pending before the Civil Judge (SD) Court, at Junagadh shall be heard together and by the same court and the District Judge, concerned shall make such arrangement. The Family Court, Court No. 4, Ahmedabad is directed to forward the Record and Proceedings of Hindu Marriage Petition No. 1498 of 2000 pending before it, to the District Judge, Junagadh. The District Judge, Junagadh on so receiving the papers of above said HMP, shall register the same and direct the proceedings of the matter according to law and as aforesaid. It is also further directed that HMP No. 1498 of 2000 which may be renumbered at Junagadh and HMP No. 30 of 2000 pending before the Court of Civil Judge (SD) Junagadh shall be tried and disposed of as expeditiously as possible and shall be disposed of within five months from the date of receipt of the writ of this court by respective courts. Rule made absolute with no

order as to costs.

Office is directed to send the writ of this order to the respective courts, forthwith.

(J.R. VORA, J.)
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